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1 STUTMAN, TREISTER & GLATT, P.C.  
2 FRANK A. MEROLA (CA Bar No. 136934)  
3 EVE H. KARASIK (CA Bar No. 155356),  
4 CHRISTINE M. PAJAK (CA Bar No. 217173)  
5 1901 Avenue of the Stars, 12<sup>th</sup> Floor  
6 Los Angeles, California 90067  
7 Telephone: (310) 228-5600  
8 Facsimile: (310) 228-5788  
9 E-mail: [fmerola@stutman.com](mailto:fmerola@stutman.com)  
10 [ekarasik@stutman.com](mailto:ekarasik@stutman.com)  
11 [cpajak@stutman.com](mailto:cpajak@stutman.com)

12 *Counsel for the Official Committee of Equity Security*  
13 *Holders of USA Capital First Trust Deed Fund, LLC*

14 GORDON & SILVER, LTD  
15 GERALD M. GORDON, ESQ. (NV Bar No. 229)  
16 GREGORY E. GARMAN, ESQ.  
17 (NV Bar No. 6654)  
18 3960 Howard Hughes Pkway, 9<sup>th</sup> Floor  
19 Las Vegas, NV 89109  
20 Telephone: (702) 796-5555  
21 Facsimile: (702) 369-2666  
22 E-mail: [gmg@gordonsilver.com](mailto:gmg@gordonsilver.com)  
23 [geg@gordonsilver.com](mailto:geg@gordonsilver.com)

24 *Counsel for Official Committee of Holders of Executory*  
25 *Contract Rights of USA Commercial Mortgage*  
26 *Company*

ORRICK, HERRINGTON & SUTCLIFFE LLP  
MARC A. LEVINSON, ESQ. (CA Bar No. 57613)  
LYNN TRINKA ERNCE, ESQ. (CA Bar No.  
179212)  
400 Capitol Mall, Suite 3000  
Sacramento, California 95814  
Telephone: (916) 447-9200  
Facsimile: (916) 329-4900  
E-mail: [malevinson@orrick.com](mailto:malevinson@orrick.com)  
[lernce@orrick.com](mailto:lernce@orrick.com)

*Counsel for Official Committee of Equity Security*  
*Holders of USA Capital Diversified Trust Deed Fund,*  
*LLC*

27 **JOINT OMNIBUS RESPONSE OF OFFICIAL COMMITTEE OF EQUITY SECURITY**  
28 **HOLDERS OF USA CAPITAL FIRST TRUST DEED FUND, LLC, THE OFFICIAL**  
29 **COMMITTEE OF HOLDERS OF EXECUTORY CONTRACT RIGHTS THROUGH**  
30 **USA COMMERCIAL MORTGAGE COMPANY, AND THE OFFICIAL COMMITTEE**  
31 **OF EQUITY SECURITY HOLDERS OF USA CAPITAL DIVERSIFIED TRUST DEED**  
32 **FUND, LLC TO (1) APPLICATION TO EMPLOY AND RETAIN RAY QUINNEY &**  
33 **NEBEKER P.C. AS COUNSEL FOR THE DEBTORS; (2) APPLICATION BY DEBTOR**  
34 **AND DEBTOR-IN-POSSESSION FOR AUTHORIZATION TO RETAIN AND EMPLOY**  
35 **SCHWARTZER & McPHERSON LAW FIRM AS COUNSEL UNDER GENERAL**  
36 **RETAINER; AND (3) DEBTORS' MOTION FOR ORDER AUTHORIZING (I) THE**  
37 **EMPLOYMENT AND RETENTION OF MESIROW FINANCIAL INTERIM**  
38 **MANAGEMENT, LLC AS CRISIS MANAGERS FOR THE DEBTORS, AND (II) THE**  
39 **DESIGNATION OF THOMAS J. ALLISON OF MESIROW FINANCIAL INTERIM**  
40 **MANAGEMENT, LLC AS CHIEF RESTRUCTURING OFFICER FOR THE DEBTORS**  
41 **AND THE EMPLOYMENT OF CERTAIN TEMPORARY EMPLOYEES. (AFFECTS**  
42 **ALL DEBTORS)**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re: ) BK-S-06-10725-LBR  
USA COMMERCIAL MORTGAGE COMPANY, ) Chapter 11  
Debtor. )

In re: ) BK-S-06-10726-LBR  
USA CAPITAL REALTY ADVISORS, LLC, ) Chapter 11  
Debtor. )

In re: ) BK-S-06-10727-LBR  
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, ) Chapter 11  
Debtor. )

In re: ) BK-S-06-10728-LBR  
USA CAPITAL FIRST TRUST DEED FUND, LLC, ) Chapter 11  
Debtor. )

In re: ) BK-S-06-10729-LBR  
USA SECURITIES, LLC, ) Chapter 11  
Debtor. )

Affects

- ☒ All Debtors  
☐ USA Commercial Mortgage Co.  
☐ USA Securities, LLC  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed  
☐ USA First Trust Deed Fund, LLC

Date: July 25, 2006  
Time: 9:30 a.m.  
Place: Courtroom #2

**JOINT OMNIBUS RESPONSE OF OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF USA CAPITAL FIRST TRUST DEED FUND, LLC, THE OFFICIAL COMMITTEE OF HOLDERS OF EXECUTORY CONTRACT RIGHTS THROUGH USA COMMERCIAL MORTGAGE COMPANY, AND THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC TO (1) APPLICATION TO EMPLOY AND RETAIN RAY QUINNEY & NEBEKER P.C. AS COUNSEL FOR THE DEBTORS; (2) APPLICATION BY DEBTOR AND DEBTOR-IN-POSSESSION FOR AUTHORIZATION TO RETAIN AND EMPLOY SCHWARTZER & McPHERSON LAW FIRM AS COUNSEL UNDER GENERAL RETAINER; AND (3) DEBTORS' MOTION FOR ORDER AUTHORIZING (I) THE EMPLOYMENT AND RETENTION OF MESIROW FINANCIAL INTERIM MANAGEMENT, LLC AS CRISIS MANAGERS FOR THE DEBTORS, AND (II) THE DESIGNATION OF THOMAS J. ALLISON OF MESIROW FINANCIAL INTERIM MANAGEMENT, LLC AS CHIEF RESTRUCTURING OFFICER FOR THE DEBTORS AND THE EMPLOYMENT OF CERTAIN TEMPORARY EMPLOYEES. (AFFECTS ALL DEBTORS)**

1 **TO THE HONORABLE LINDA B. RIEGLE, UNITED STATES BANKRUPTCY JUDGE:**

2           The Official Committee of Equity Security Holders of USA Capital First Trust  
3 Deed Fund, LLC, the Official Committee of Holders of Executory Contract Rights through USA  
4 Commercial Mortgage Company, and the Official Committee of Equity Security Holders of  
5 USA Capital Diversified Trust Deed Fund, LLC (collectively, the "Responding Committees")  
6 hereby respond (the "Response") to the (1) Application To Employ And Retain Ray Quinney &  
7 Nebeker P.C. As Counsel For The Debtors (the "Ray Quinney Application"); (2) Application By  
8 Debtor And Debtor-In-Possession For Authorization To Retain And Employ Schwartzer &  
9 McPherson Law Firm As Counsel Under General Retainer (the "Schwartzer Application"); and  
10 (3) Debtors' Motion For Order Authorizing (I) The Employment And Retention Of Mesirow  
11 Financial Interim Management, LLC As Crisis Managers For The Debtors, And (II) The  
12 Designation Of Thomas J. Allison Of Mesirow Financial Interim Management, LLC As Chief  
13 Restructuring Officer For The Debtors And The Employment Of Certain Temporary Employees.  
14 (the "Mesirow Motion") and respectfully represent as follows:

15 **I. FACTS**

16           1. Chapter 11 bankruptcy petitions in each of the five Chapter 11 Cases were  
17 filed on April 13, 2006 (the "Petition Date").

18           2. On April 14, 2006, USA Commercial Mortgage ("USACM"), USA  
19 Capital Diversified Trust Deed Fund, LLC ("USA Diversified"), USA Capital First Trust Deed  
20 Fund, LLC ("USA First"), USA Securities, LLC ("USA Securities"), and USA Capital Realty  
21 Advisors, LLC ("USA Realty, and together with USACM, USA Diversified, USA First, and  
22 USA Securities, the "Debtors") filed the Mesirow Motion, whereby the Debtors requested the  
23 Court enter an order authorizing (i) the employment and retention of Mesirow Financial Interim  
24 Management, LLC ("Mesirow") as crisis managers to all of the Debtors, (ii) the designation of  
25 Thomas J. Allison ("Allison") of Mesirow as Chief Restructuring Officer ("CRO") of all of the  
26 Debtors; and (iii) the employment of certain temporary employees provided by Mesirow (the  
27 "Temporary Employees").

28           3. On April 18, 2006, the Debtors filed the Ray Quinney Application and the

1 Schwartzer Application. Through the Ray Quinney Application, the Debtors sought an order  
2 authorizing the employment of Ray, Quinney & Nebeker P.C. ("Ray Quinney") as counsel for  
3 the Debtors in the Chapter 11 Cases. The Schwartzer Application requested an order authorizing  
4 the employment of Schwartzer & McPherson Law Firm ("Schwartzer & McPherson" and  
5 together with Mesirow, Allison, the Temporary Employees, and Ray Quinney, the "Debtors'  
6 Professionals") as counsel to the Debtors in the Chapter 11 Cases.

7 4. By order dated April 19, 2006, the Mesirow Motion was granted on an  
8 interim basis (the "Interim Mesirow Order"). The Interim Mesirow Order provides that the  
9 Debtors are authorized to employ Allison as CRO and other employees of Mesirow from the  
10 Petition Date through July 27, 2006, at which time the Court will consider an extension of the  
11 employment of Mesirow and Allison.

12 5. On June 5, 2006, the Court entered orders granting the Ray Quinney  
13 Application (the "Interim Ray Quinney Order") and the Schwartzer Application (the "Interim  
14 Schwartzer Order") on an interim basis. Specifically, the Interim Ray Quinney Order and the  
15 Interim Schwartzer Order respectively provide that the Debtors are authorized to employ Ray  
16 Quinney and Schwartzer & McPherson as counsel in the Chapter 11 Cases for the same length of  
17 time as the interim employment of Mesirow and Allison (through July 27, 2006).

18 6. On June 9, 2006, the Debtors filed the "Debtors' Application For  
19 Administrative Order Establishing Procedures For Interim Compensation And Reimbursement  
20 Of Expenses Of Professionals" (the "Interim Compensation Motion"), which is set for hearing on  
21 August 4, 2006. The Interim Compensation Motion proposes procedures for compensating and  
22 reimbursing professionals in the Chapter 11 Cases on a monthly basis.

23 7. The Debtors have informed the Responding Committees that if the Interim  
24 Compensation Motion is granted at the August 4, 2006 hearing, the Debtors' Professionals will  
25 provide to the official committees appointed in the Chapter 11 Cases a statement of their fees and  
26 expenses to date in the Chapter 11 Cases no later than August 11, 2006, which statement will  
27 allocate fees and expenses according to Debtors' estate(s) on account of which such fees and  
28 expenses were incurred. The Debtors have further informed the Responding Committees that

1 thereafter the Debtors' Professionals will provide monthly fee and expense statements that will  
2 allocate fees and expenses on an estate by estate basis.

## 3 II. ARGUMENT

### 4 A. The Employment of the Debtors' Professionals Should Be Extended For Only 60 5 Days Because Significant Conflicts Among The Estates May Still Emerge.

6 8. In initially considering whether to authorize the employment of the  
7 Debtors' Professionals, the Court voiced its concern that it may be inappropriate to have one set  
8 of professionals represent multiple estates where, as here, significant conflicts may emerge  
9 among the estates. Indeed, this concern, in large part, apparently motivated the Court's decision  
10 to authorize the employment of the Debtors' Professionals on an interim basis rather than for the  
11 duration of the Chapter 11 Cases on the theory that the Court believed that by the end of July  
12 2006, the Court and parties in interest would have a clearer idea of whether significant conflicts  
13 between the estates were on the horizon.

14 9. Just over three months into the Chapter 11 Cases, the potential for  
15 significant conflict among the Debtors' estates remains a likely, if not probable, outcome.  
16 Certain of the Debtors' estates appear to have opposing economic interests that may give rise to  
17 litigation. Even if such conflicting interests do not result in full blown litigation, the Debtors'  
18 Professionals will likely face numerous situations in which they must choose among courses of  
19 action that benefit some Debtors while harming (or at least not maximizing benefit to) other  
20 Debtors.

21 10. Chief among these potentially flammable situations is the Debtors'  
22 anticipated joint plan of reorganization, which the Responding Committees believe will be filed  
23 in the near future. If, upon the filing of the Debtors' plan, it is evident that the plan treats certain  
24 estates more favorably than others, then parties in interest may be forced to move to employ  
25 professionals to represent specific estates. Merely extending the interim employment of the  
26 Debtors' Professionals rather than authorizing their employment for the duration of the Chapter  
27 11 Cases will provide flexibility to parties in interest as well as continue to ensure that the  
28 Debtors' Professionals focus their efforts on not favoring any of the estates over the others.

11. Moreover, as the Chapter 11 Cases move beyond their preliminary stage

1 and into detailed plan discussions and negotiations, the Responding Committees believe that it is  
2 crucial that the Debtors' Professionals are incentivized to proceed expediently so as not to  
3 prolong these cases any further than necessary. In extending the employment of the Debtors'  
4 Professionals by only 60 days, the Court will send a clear message to the Debtors' Professionals  
5 that there can be no delay in reaching the exit of the Chapter 11 Cases, which message cannot  
6 help but serve as a strong incentive to the Debtors' Professionals to administer the Chapter 11  
7 Cases in a prudent yet efficient manner.

8 **B. As A Condition To Extending The Employment Of The Debtors' Professionals,**  
9 **They Should Be Required To Allocate Their Fees And Expenses To The Estate(s)**  
10 **On Behalf Of Which Specific Fees And Expenses Were Incurred.**

11 12. While the Chapter 11 Cases are being jointly administered for procedural  
12 purposes, they have not been substantively consolidated. As such, each of the Debtors' estates  
13 continues to be a distinct entity with its own creditors and equity interests.

14 13. Since the inception of the Chapter 11 Cases, the Debtors' Professionals  
15 have rendered substantial services. Presumably, while certain services have been rendered on  
16 account of all of the Debtors, other services have been rendered on account of fewer than all of  
17 the Debtors or even on account of a single Debtor.

18 14. To date, the Debtors' Professionals have not allocated their fees and  
19 expenses according to the Debtor's estate on behalf of which particular fees and expenses have  
20 been incurred. However, the Debtors have informed the Responding Committees that they will  
21 provide an allocation of their fees and expenses to the official committees in the Chapter 11  
22 Cases no later than August 11, 2006 and that fee statements including estate-by-estate allocation  
23 of fees and expenses will continue on a monthly basis for the duration of the employment of the  
24 Debtors' Professionals.

25 15. The continued employment of the Debtors' Professionals should be  
26 conditioned on the provision of monthly fee statements that allocate the fees and expenses of the  
27 Debtors' Professionals by estate. If the Debtors' Professionals are permitted to continue incurring  
28 fees and expenses at the expense of the Debtors' estates but are not required to allocate their fees  
and expenses, certain of the Debtors' estates, to the detriment of their creditors and equity interest



1 holders, may be forced to subsidize the professional fees of other estates, whose creditors and  
2 equity interest holders will reap a windfall.

3 16. This allocation issue must be addressed immediately, as the Debtors'  
4 Professionals have rendered and are seeking to be able to continue to render substantial services  
5 to the Debtors. Given the large volume of services being rendered to the Debtors, any further  
6 delay in the commencement of such allocation threatens to impede the ability of the Debtors'  
7 Professionals to analyze their fees and expenses so as to retroactively allocate such fees and  
8 expenses accurately.

9 17. Furthermore, in order to understand, strategize, and make informed  
10 decisions with respect to the Chapter 11 Cases, each estate's creditors and equity security interest  
11 holders, need to be informed as to the amount of professional fees being incurred by the  
12 particular estate in which they hold an interest. Currently, parties in interest are completely in  
13 the dark with respect to each estate's professional fees and expenses, and, therefore, are left to  
14 guess as to the net amount that may be available for investors.

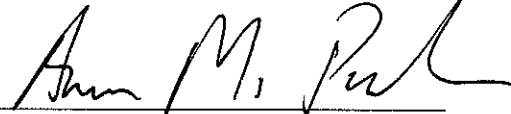
15 18. Accordingly, the Responding Committees request that as a condition of  
16 the continued employment of the Debtors' Professionals, the Court order the Debtors'  
17 Professionals to allocate their fees and expenses to the estate(s) on behalf of which particular  
18 services are rendered, with such allocation to begin with the Debtors' fee and expense statement  
19 dated August 11, 2006. Furthermore, for the duration of their employment, the Debtors'  
20 Professionals should be required to serve such allocation on a monthly basis on the United States  
21 Trustee and official committees in the Chapter 11 Cases.

22 **WHEREFORE**, the Responding Committees hereby request that (i) the Court  
23 extend the employment of the Debtors' Professionals on an interim basis for no more than 60  
24 days through and including September 25, 2006; and (ii) the Court condition any extension of the  
25 employment of the Debtors' Professionals in the Chapter 11 Cases on their providing monthly  
26 fee statements to the U.S. Trustee and the official committees in these cases beginning on August  
27 11, 2006, which statements shall include an estate by estate allocation of fees and expenses.  
28

1 Respectfully submitted this 21st day of July, 2006.

2  
3 SUBMITTED BY:

4 STUTMAN, TREISTER & GLATT, P.C.

5 

6 FRANK A. MEROLA, ESQ.  
7 EVE H. KARASIK, ESQ.  
8 ANDREW M. PARLEN, ESQ.  
1901 Avenue of the Stars, 12<sup>th</sup> Floor  
Los Angeles, CA 90067

9 Counsel for the Official Committee of Equity  
10 Security Holders of USA Capital First Trust  
11 Deed Fund, LLC

12  
13 SUBMITTED BY:

14 ORRICK, HERRINGTON & SUTCLIFFE  
15 LLP

16  
17 MARC A. LEVINSON, ESQ.  
18 LYNN TRINKA ERNCE, ESQ.  
400 Capitol Mall, Suite 3000  
Sacramento, California 95814-4407

19 Counsel for Official Committee of Equity  
20 Security Holders of USA Capital Diversified  
21 Trust Deed Fund, LLC

SUBMITTED BY:

GORDON & SILVER, LTD

GERALD M. GORDON, ESQ.  
GREGORY E. GARMAN, ESQ.  
3960 Howard Hughes Pkway, 9<sup>th</sup> Floor  
Las Vegas, NV 89109

Counsel for Official Committee of Holders of  
Executory Contract Rights of USA Commercial  
Mortgage Company



1 Respectfully submitted this 21st day of July, 2006.


2  
3 SUBMITTED BY:

4 STUTMAN, TREISTER & GLATT, P.C.

SUBMITTED BY:

GORDON & SILVER, LTD

5  
6 FRANK A. MEROLA, ESQ.  
7 EVE H. KARASIK, ESQ.  
8 ANDREW M. PARLEN, ESQ.  
9 1901 Avenue of the Stars, 12<sup>th</sup> Floor  
10 Los Angeles, CA 90067

  
11 GERALD M. GORDON, ESQ.  
12 GREGORY E. GARMAN, ESQ.  
13 3960 Howard Hughes Pkway, 9<sup>th</sup> Floor  
14 Las Vegas, NV 89109

15 Counsel for the Official Committee of Equity  
16 Security Holders of USA Capital First Trust  
17 Deed Fund, LLC

Counsel for Official Committee of Holders of  
Executory Contract Rights of USA Commercial  
Mortgage Company

18  
19 SUBMITTED BY:

20 ORRICK, HERRINGTON & SUTCLIFFE  
21 LLP

22  
23 MARC A. LEVINSON, ESQ.  
24 LYNN TRINKA ERNCE, ESQ.  
25 400 Capitol Mall, Suite 3000  
26 Sacramento, California 95814-4407

27 Counsel for Official Committee of Equity  
28 Security Holders of USA Capital Diversified  
Trust Deed Fund, LLC

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2  
3 SUBMITTED BY:

4 STUTMAN, TREISTER & GLATT, P.C.

SUBMITTED BY:

GORDON & SILVER, LTD

5  
6 FRANK A. MEROLA, ESQ.  
7 EVE H. KARASIK, ESQ.  
8 ANDREW M. PARLEN, ESQ.  
1901 Avenue of the Stars, 12<sup>th</sup> Floor  
Los Angeles, CA 90067


GERALD M. GORDON, ESQ.  
GREGORY E. GARMAN, ESQ.  
3960 Howard Hughes Pkway, 9<sup>th</sup> Floor  
Las Vegas, NV 89109

9  
10 Counsel for the Official Committee of Equity  
Security Holders of USA Capital First Trust  
11 Deed Fund, LLC

Counsel for Official Committee of Holders of  
Executory Contract Rights of USA Commercial  
Mortgage Company

12  
13 SUBMITTED BY:

14 ORRICK, HERRINGTON & SUTCLIFFE  
15 LLP

16   
17 MARC A. LEVINSON, ESQ.  
18 LYNN TRINKA ERNCE, ESQ.  
400 Capitol Mall, Suite 3000  
Sacramento, California 95814-4407

19  
20 Counsel for Official Committee of Equity  
Security Holders of USA Capital Diversified  
21 Trust Deed Fund, LLC

22  
23  
24  
25  
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27  
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